

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ESTATE OF JAY ANSERSON, JR.
by Special Administrator, Starkeisha DeLaRosa;
J.A. minor child, through her next friend Starkeisha DeLaRosa,

Plaintiff,

Case No. 2:21-cv-001179

v.

JOPSEH ANTHONY MENSAH, Former Officer with the Wauwatosa
Police Department in his individual and official capacity,
BARRY WEBER, Former Chief of Police with the Wauwatosa
Police Department in his official capacity; and
CITY OF WAUWTOSA, a municipality,

Defendants.

DEFENDANTS' ANSWER and AFFIRMATIVE DEFENSES

Defendants, Joseph Anthony Mensah, Barry Weber, and City of Wauwatosa, by their attorneys, Gunta Law Offices, S.C., submit their Answer to Plaintiffs' Complaint (Dkt. No. 1) as follows:

I. INTRODUCTION

1. This is paragraph does not contain a complete or cohesive allegation, subject to that explanation, Deny.

2. This is paragraph does not contain a complete or cohesive allegation, subject to that explanation, Deny.

3. Deny.

4. Deny.

5. Deny.

6. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

7. Deny.

II. JURISDICTION AND VENUE

8. Admit.

9. Admit.

III. PARTIES

10. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

11. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

12. Admit.

13. Admit.

14. Admit.

15. Admit.

IV. BACKGROUND

A. National Epidemic of Police Killing Young Men of Color

16. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

17. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

18. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

19. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

20. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

21. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

22. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

23. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

24. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

B. Wauwatosa Police Department Embraces and Promotes Racism

25. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

26. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

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44. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

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48. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

49. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

50. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

51. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

52. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

53. Deny.

54. Deny.

55. Deny.

56. Admit.

57. Admit that Jay Anderson was involved in police officer shooting in Wauwatosa and subsequently died. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations, and therefore deny and put Plaintiffs to their proof.

C. Joseph Mensah is Rewarded for his First Killing

58. Admit that Officer Mensah has been involved in three officer-involved shootings.

59. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

60. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

61. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

62. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

63. Deny.

64. Deny.

65. Deny.

66. Deny.

67. Deny.

68. Admit that when Antonio came out of his house, he *was* holding a sword.
69. Admit that Officer Mensah commanded Antonio to drop the sword.
70. Deny.
71. Deny.
72. Deny.
73. Deny.
74. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
75. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
76. Deny.
77. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
78. Deny.
79. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
80. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
81. Deny.
82. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.
83. Deny.
84. Admit that on February 2, 2020, Officer Mensah shot Alvin Cole during a justified use of force situations and that Cole ultimately died.
85. Admit that Officer Mensah was the only officer that discharged a weapon during the February 2, 2020 incident. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of this Paragraph, and therefore deny and put Plaintiffs to their proof.

86. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

87. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

88. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

89. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

V. FACTUAL ALLEGATIONS

90. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

91. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

92. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

93. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

94. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

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96. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

97. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

98. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

99. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

100. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

101. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

102. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

103. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

104. This paragraph is ambiguous as to time. Accordingly, lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

105. Deny.

106. Deny.

107. Deny.

108. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

109. Deny.

110. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

111. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

112. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

113. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

114. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

115. Admit.

116. The wording of this allegation is ambiguous as to time. To that extent, lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

117. Admit that at some point Anderson raised his hands.

118. Deny.

119. Deny that Anderson's hands remained up throughout his interaction with Officer Mensah.

120. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

121. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

122. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

123. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

124. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

125. Deny.

126. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

127. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

128. This is paragraph does not contain a complete or cohesive allegation, therefore lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

129. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

130. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

131. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

132. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

133. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

134. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

135. This is paragraph does not contain a complete or cohesive allegation, therefore lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

136. Deny.

137. Deny.

138. This is paragraph does not contain a complete or cohesive allegation, therefore lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

139. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

140. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

141. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

142. Deny.

143. Deny.

144. Deny.

145. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

146. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

147. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

148. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

149. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

150. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

A. Defendant Wauwatosa's customs, policies, and/or practices within the WPD caused violations of Jay Anderson's constitutional rights.

151. Deny.

152. Deny.

153. Deny.

154. Deny.

155. Deny.

156. Deny.

157. Deny.

158. Deny.

159. Deny.

160. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

161. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

162. Deny.

**FIRST CLAIM FOR RELIEF
42 U.S.C. §1983 – Fourth Amendment
Excessive Force
(Estate of Jay Anderson, Jr. against All Defendants)**

163. Defendants reallege and incorporate paragraphs 1 through 162 of this Answer.

164. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

165. Admit.

166. Deny.

167. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

168. Deny.

169. Deny.

170. Deny.

171. Deny.

172. Deny.

173. Deny.

174. Deny.

175. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

176. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

177. Deny.

178. Deny.

179. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

180. Deny.

181. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

182. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

183. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

184. Deny.

185. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

186. Deny.

187. Deny.

188. Deny.

SECOND CLAIM FOR RELIEF
42 U.S.C. §1983 – Fourteenth Amendment
Denial of Equal Protection
(Estate of Jay Anderson, Jr. against All Defendants)

189. Defendants reallege and incorporate paragraphs 1 through 188 of this Answer.

190. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

191. Admit.

192. Deny.

193. Deny.

194. Deny.

195. Deny.

196. Deny.

197. Deny.

198. Deny.

199. Deny.

200. Deny.

201. Deny.

202. Deny.

203. This paragraph does not contain a complete and coherent allegations. Accordingly, lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

204. Deny.

205. Deny.

206. Deny.

207. Deny.

208. Deny.

209. Deny.

THIRD CLAIM FOR RELIEF
42 U.S.C. §1983 – Fourth Amendment
Loss of Society and Companionship
(J.A. Against Defendants Mensah and City of Wauwatosa)

210. Defendants reallege and incorporate paragraphs 1 through 209 of this Answer.

211. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

212. Deny.

213. Deny.

214. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

215. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

216. Deny.

217. Deny.

Fourth Claim for Relief
Wisconsin Statute Section 895.46
Indemnification against Wauwatosa

218. Defendants reallege and incorporate paragraphs 1 through 218 of this Answer.

219. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

220. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

221. Admit.

222. Deny.

223. Deny.

224. Deny.

225. Deny.

226. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

227. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

228. Lack knowledge and information sufficient to form a belief as to the truth or falsity of this Paragraph, and therefore deny and put Plaintiffs to their proof.

229. Deny.

230. Admit that if there is a judgment against any of the municipal defendants that would be governed by Wis. Stat. § 895.46.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, as follows:

1. These Defendants deny the Plaintiffs are entitled to the relief requested.
2. These Defendants deny the Plaintiffs are entitled to the relief requested.
3. These Defendants deny the Plaintiffs are entitled to the relief requested.
4. These Defendants deny the Plaintiffs are entitled to the relief requested.
5. These Defendants deny the Plaintiffs are entitled to the relief requested.
6. These Defendants deny the Plaintiffs are entitled to the relief requested.
7. These Defendants deny the Plaintiffs are entitled to the relief requested.
8. These Defendants deny the Plaintiffs are entitled to the relief requested.
9. These Defendants deny the Plaintiffs are entitled to the relief requested.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' state law claims are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.
3. Any injuries or damages suffered by the Plaintiffs were caused by their own conduct and/or the conduct and contributory negligence of a third party other than the Defendants.
4. The actions of the Plaintiffs were for the sole purpose of provoking law enforcement to arrest them and were done for no other lawful reason.
5. The Plaintiffs may have failed to mitigate their damages.
6. Plaintiffs' Complaint fails to state a cause of action against the City of Wauwatosa pursuant to *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) since there can be no recovery for a federal civil rights violation where there is no constitutional deprivation occurring pursuant to government policy, custom, or practice.
7. All of the acts for the answering Defendants were in good faith and not motivated by malice or the intent to harm.
8. Plaintiffs are not entitled to punitive damages.
9. Defendants are entitled to qualified immunity from suit.
10. Defendants are entitled to discretionary act immunity.
11. The injuries and damages, if any, were not caused by a governmental policy or practice of these Answering Defendants.
12. The Court lacks personal jurisdiction over the John Does because Plaintiffs have not properly served them in this action.

13. One or more of Plaintiffs' claims may not be cognizable by the Heck doctrine, the lack of a seizure or the existence of probable cause.

14. No individual defendant can be found liable for the actions of any other individual defendant(s) under a theory of respondeat superior, or supervisory liability.

15. Defendants are entitled to prosecutorial immunity.

16. Defendants are entitled to sovereign immunity.

17. Plaintiffs lack standing to sue.

WHEREFORE, Defendants demand judgment dismissing this matter and awarding them their costs and reasonable attorney's fees.

THE DEFENDANTS DEMAND A JURY TRIAL

Dated at Wauwatosa, Wisconsin this ____ day of December, 2021.

GUNTA LAW OFFICES, S.C.
Attorneys for Defendants

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